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Applicant : Kerry McLellan et al.
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APPEAL BRIEF

Sir:

This appeal brief is filed further to the Notice of Appeal filed October 26, 2009.

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I. Real Party in Interest

The Real Party in Interest in the present appeal is Kinek Technologies Inc., assignee of co-inventors Kerry McLellan, Christopher Magee, Paul Mansz, Fred Bullock, Greg Parker, Jeff Sheehan and Lorie Vaughan, recorded in Reel/Frame 014274/0100.

II. Related Appeals and Interferences

(NONE)

III. Status of Claims

Claims 1-21 were originally filed of which claims 2, 6, and 13-21 have since been canceled. New claims 22-29 were added and have since been canceled. Claims 1, 3-5 and 7-12 stand finally rejected, as in the Final Action dated August 19, 2009 (also referred to as the "Final Action").

Applicants appeal the final rejection of claims 1, 3-5 and 7-12.

IV. Status of Amendments

The Applicants have not filed any amendment subsequent to the Final Action of August 19, 2009. The Applicants' last filed amendment responded to the Non-Final Action of March 16, 2009.

V. Summary of Claimed Subject Matter

The following provides a concise summary of the subject matter recited in each independent claim under appeal, as well as each dependent claim containing means-for or step-for language that is separately argued in section VII below. Each claim element is identified with corresponding reference to the specification and, where applicable, to the drawings. Applicants note that reference to the specification or to the drawings does not incorporate any limitation presented therein into the body of the claims, other than the limitations explicitly recited in the body of the claims.

Claim 1

Claim 1 recites a method of delivering a parcel (Page 3, Lines 14-15) to a recipient (Page 3, Lines 15-16). The method comprises attempting a delivery at a primary location (Page 7, Lines 16-18; Figure 3, reference numeral 105). Typically, the primary location is the recipient's home or business address, but it may be any other location chosen by the recipient (Page 5, Lines 14-16). If the delivery to the primary location fails (Page 7, Lines 18-20; Figure 3), the method further comprises communicating from a mobile device a notification to the recipient to an upcoming delivery to a preferred redirection location (Page 7, Lines 17-29; Page 8, Lines 10-14; Figure 3). The notification preferably includes information pertaining to the delivery or redirection event (e.g. date and time and location) (Page 11, Lines 1-2). The preferred redirection

location is selected prior to the delivery (Page 5, Lines 6-10) and may include without limitation residential addresses of neighbors, business locations provisioned to receive deliveries on behalf of others (e.g. postal outlets, convenience stores, service stations), and automated delivery platforms (e.g. electronic delivery lockers) (Page 5, Lines 17 – 20). The method further comprises receiving at the mobile device a response to the notification from the recipient after a failed delivery (Page 8, Lines 18-22; Figure 3). The response to the notification is adapted to change the preferred redirection location to an alternative redirection location provided after the failed delivery (Page 8, Lines 22-24). The alternative redirection location is different from the primary location and the preferred redirection location. The method further comprises delivering the parcel to the alternative redirection location (Page 8, Lines 29-31; Figure 3, reference numeral 145).

VI. Grounds of Rejection to be Reviewed on Appeal

The Applicants request review of the following grounds of rejection:

1. Claims 1, 3-5 and 7-12 under 35 U.S.C. §103(a) for being unpatentable over Kuebert et al. (U.S. Published Patent Application No. 2002/0165729), in view of Myrick et al. (U.S. Published Patent Application No. 2004/0133446) as supported by U.S. Provisional Application No. 60/423,045, further in view of Ray (U.S. Published Patent Application No. 2004/0128207).

VII. Argument

The arguments presented below are made separately with respect to each grouping of claims and equally with respect to each claim within a particular grouping.

Rejection of claims 1, 3-5 and 7-12 under 35 U.S.C. §103(a)

In the Final Office Action dated August 19, 2009, the Examiner rejected claims 1, 3-5 and 7-12 under 35 U.S.C. §103(a) for being unpatentable over Kuebert et al. (U.S. Published Patent Application No. 2002/0165729), in view of Myrick et al. (U.S. Published Patent Application No. 2004/0133446) as supported by U.S. Provisional Application No. 60/423,045, further in view of Ray (U.S. Published Patent Application No. 2004/0128207).

For at least the reasons argued below, Applicants appeal the final rejection of claims 1, 3-5 and 7-12.

Claims 1, 3-5 and 7-12

The Applicants submit that Kuebert et al., Myrick et al., and Ray, either alone or in combination, do not disclose the following limitation recited in claim 1:

“receiving at the mobile device a response to the notification from the recipient after a failed delivery, wherein the response to the notification is adapted to change the preferred redirection location to an alternative redirection location provided after the failed delivery, wherein the alternative redirection location is different from the primary location and the preferred redirection location”

This limitation can be described in plain language as responding to a failed delivery notification with an alternative redirection location which has not previously been provided. This limitation is also referred to below as selecting a redirection location ‘on the fly’.

On Page 3 of the Final Action, the Examiner appears to concede that neither Kuebert et al. nor Myrick et al. disclose this limitation. However, it is the Examiner's position that this feature is disclosed in Ray and it would have been obvious to modify the combination of Kuebert et al. and Myrick et al. with Ray's disclosure of a mobile device. The relevant portion of the Final Action is reproduced below for reference:

"However, both Kuebert and Myrick fail to disclose the following limitation. Meanwhile, Ray discloses receiving at the mobile device a response to the notification from the recipient after a failed delivery, wherein the response to the notification is adapted to change the preferred redirection location to an alternative redirection location provided after the failed delivery, and delivering the parcel to the alternative redirection location (see Figures 1-4, [0025]). From the teaching of Ray, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify both Kuebert's and Myrick's inventions with Ray's disclosure of a mobile device in order "for providing item delivery notification (see Ray Abstract)."

Ray Reference

Ray was cited for the first time in the Final Action. The Applicants submit that the passages of Ray cited by the Examiner do not disclose "receiving at the mobile device a response to the notification from the recipient after a failed delivery" as recited in claim 1. Specifically, Figures 1-4 of Ray disclose (i) notifying the recipient when the item has been placed in a delivery system directed to the recipient at a first address (Ray, Paragraph [0032]); (ii) notifying the sender if the item is successfully delivered to the recipient (Ray, Paragraph [0029]; (iii) notifying the sender if the item has not been delivered (Ray, Paragraph [0037]); (iv) notifying the recipient if the item has not been delivered (Ray, Paragraph [0037]); and (v) notifying the sender if the item has been picked up at a central location (Ray, Paragraph [0039]).

Figures 1-4 of Ray do not disclose receiving at the mobile device any message from the recipient after the failed delivery notification. More particularly, Figures 1-4 of Ray do not disclose receiving at the mobile device a response from the recipient after the failed delivery notification, wherein the response to the notification is adapted to change the

preferred redirection location to an alternative redirection location provided after the failed delivery. Specifically, in Ray, the failed delivery notification tells the recipient where the recipient can now pick-up the item. The recipient is not given the opportunity to respond to the failed notification to specify an alternative delivery location.

As described in paragraph [0038] of Ray, from the failed delivery notification, the recipient knows, for example, that the item is waiting at the post office and can be picked up on the way home without creating a second trip. In addition, the failed delivery notification may contain information, such as a code, that allows the recipient to obtain the item from the post office or through self-service equipment holding the item at the post office or other central location. Consequently, paragraph [0038] of Ray teaches away from responding to a failed delivery notification by instructing the recipient to pick up the item. There is little point to responding to a failed delivery notification with an alternative redirection location if the notification provides instructions for picking up the item.

Paragraph [0025] of Ray also does not disclose receiving at the mobile device a response from the recipient after the failed delivery notification. Paragraph [0025] of Ray simply discloses that the delivery system operator, sender, or recipient, may utilize a wireless communications system in order to exchange e-mails via the Internet, and that the sender computer, recipient computer, and delivery system operator computer may be any mobile terminal such as a smart phone, personal digital assistant (PDA), intelligent pager, portable computer, hand held computer, or any other device capable of receiving wireless data. Paragraph [0025] contains no teaching whatsoever as to the information contained in the communications or timing of the communications, as recited in claim 1.

Kuebert et al. Reference

Although the Examiner has not explicitly stated that Kuebert et al. or Myrick et al. disclose the limitation of claim 1 set out above, the Applicants submit that neither of these references, alone or in combination, disclose this limitation.

In general, Kuebert et al. disclose methods and systems for flexibly changing the delivery point and time for a mail item, while the item is en route. While an item is en route between the sending point and the delivery point, a notification is sent to indicate that the item is in transit. In response, the delivery of the item may be changed. For example, the destination specified by the sender (e.g., the delivery address written on the item) may be changed or a delivery time may be specified. The item is then delivered to the new delivery point and/or at the specified delivery time. (Kuebert et al., Abstract; Paragraph [0017])

Paragraph [0041] of Kuebert et al. teaches that, in one embodiment, the recipient may be notified after an actual delivery attempt fails – e.g., in a situation where a “yellow slip” would normally be left at the recipient address after the delivery attempt. However, Kuebert et al. does not explicitly teach that the delivery failure notification includes the address of a preferred redirection location; nor does it teach that after receiving the failed delivery notification the recipient may respond with a message indicating an alternative redirection location.

Paragraph [0043] of Kuebert et al. teaches that after the recipient receives a notification that the item is en route to the delivery point, the recipient may respond to the notification with delivery instructions. Paragraph [0043] teaches that the recipient's delivery instructions may include, among other things, a new delivery point (e.g., “deliver to my office instead of my home”). Applicants submit that paragraph [0043] contains the most relevant disclosure of Kuebert et al. Nevertheless, there is no disclosure in paragraph [0043] that the new delivery point of Kuebert et al. is provided in response to a failed delivery communication, nor is there any disclosure that the new delivery point is selected ‘on the fly’ (i.e. is not previously defined). In fact, Applicants

submit that the wording of paragraph [0043] clearly indicates that the “new delivery point” is selected from previously defined locations. Since terms like “my home” and “my office” do not actually provide an address or other location information, Applicants submit that these terms must be tags which allow the recipient to select from previously defined locations. As such, the new delivery point of Kuebert is the same as the preferred redirection location of claim 1 because it is provided prior to the failed delivery. Applicants submit that the “new delivery point” of Kuebert is different from the alternative redirection location of claim 1 because the alternative redirection location is provided after the failed delivery notification (i.e. ‘on the fly’).

Kuebert et al. support the Applicants’ position by teaching that the instructions be approved before they are acted on. For example, in one embodiment described in paragraph [0047] of Kuebert et al., the sender compares the new delivery address to a list of previously specified acceptable delivery addresses for the recipient, and agrees if the new address is on the list. As stated in paragraph [0047], agreeing to only predefined alternate addresses helps reduce fraudulent redirection of mail. Accordingly, Kuebert et al. teach that the new delivery point is one of a predefined list of address.

Paragraphs [0049] and [0050] of Kuebert et al. disclose notifying the sender of a failed delivery and allowing the sender to specify a new delivery point. However, in both paragraphs only the sender is allowed to specify a new delivery point. On the other hand, claim 1 clearly recites that the alternative redirection location is provided by the recipient.

Myrick et al. Reference

In general, Myrick et al. disclose methods and systems for delivering a package or product to an alternate delivery location (ADL) for pick up by a customer or authorized retriever (Myrick et al., Abstract). Myrick discloses a number of embodiments for selecting the ADL as a delivery location. However, all of the embodiments rely on the

teachings of the first embodiment to register the ADL. The first embodiment clearly teaches at paragraph [0008] as follows:

Prior to the product being shipped, a Buyer communicates with the ADL solution provider (ADL SP) to register for ADL delivery services. This communication is preferably performed via the Internet on the solution provider's website. The customer selects the most convenient ADL address from a list of approved ADLs. This list can be presented by an ADL locator tool on the ADL SP website that allows a Buyer to choose among ADLs that meet criteria provided by the Buyer. A Buyer's ADL selection can be recorded in an Alternate Delivery Location Tracking System (ATS) consisting of at least one processor and at least one database. Other information is solicited and recorded in the ATS at this time including authorized retrievers, preferred notification method(s) (phone, email, pager, etc.), and information necessary to complete notification. [emphasis added]

The above passage clearly shows that any ADLs must be predefined prior to the parcel being shipped.

Applicants submit that the third embodiment taught by Myrick et al. is most relevant to the present application. The third embodiment is discussed by Myrick et al. at paragraphs [0014] and [0059] and Figure 7. At paragraphs [0014] and [0059], Myrick et al. teach that, in the event of a failed delivery, a communication is left at the delivery address informing the occupant of the attempted delivery. The communication also offers the occupant the option of having the package sent to an ADL. The communication includes a phone number that the customer may call, or a website address that the customer may visit to instruct the carrier to deliver the package to an ADL instead of attempting to redeliver the package.

The Applicants respectfully submit that the "delivery address" of Myrick et al. is equivalent to the primary location recited in claim 1. It is the location first selected by the recipient when purchasing the package contents. As discussed above, the "ADL" taught by Myrick et al. is equivalent to the preferred redirection location recited in claim 1. In other words, the ADL is an alternate delivery location provided by the recipient before the first delivery attempt of the parcel.

Accordingly, the Applicants respectfully submit that Myrick et al. do not teach that the recipient's response to the notification of failed delivery can "change the preferred redirection location to an alternative redirection location provided after the failed delivery" as recited in claim 1.

Specifically, the alternate redirection location of claim 1 is distinguishable from the ADL taught by Myrick et al. because the alternative redirection location is provided by the recipient after the failed delivery, whereas the ADL taught by Myrick et al. is provided prior to the attempted delivery. At most, the recipient may select one of a predetermined list of ADLs after receiving a failed delivery notification. It is clear, however, that the recipient may not select a new address after receiving a failed delivery notification. This is illustrated in par. [0008] discussed above and in the following passages from Myrick et al:

Upon completion of an ADL order, the shipper would then enter or upload the package information into the ATS including ADL address, and customer contact information. This step is preferably automated, but can be performed manually." (Myrick et al., Paragraph [0013])

Sometime after enrollment in the ADL program, Buyer makes a purchase at step 203. This purchase is preferably made online via the Internet, but it can also be made via phone-in order, mail order catalog, or in a retail store. Any transaction that requires that a product be shipped to a recipient is within the scope of the invention. Buyer gives the Seller the address of the chosen ADL." (Myrick et al., Paragraph [0037])

At the time the purchase decision is made, the Seller offers the Buyer the choice of having the package shipped to an ADL." (Myrick et al., Paragraph [0046])

This difference between the alternative redirection location of claim 1 and the ADL taught by Myrick et al. provides an important advantage for the claimed invention. Specifically, the claimed method allows the recipient to provide a completely new delivery location 'on the fly' after being notified of a failed delivery attempt.

In contrast, Myrick et al. suffers from the same disadvantage which is overcome by the present invention, namely only offering the recipient the ability to deliver the package to

locations selected prior to the failed delivery attempt (i.e. the "delivery address" or the "ADL" referred to in paragraph [0059] of Myrick et al.).

Conclusion

In conclusion, the Applicants submit that Kuebert et al., Myrick et al., and Ray, either alone or in combination, do not disclose "receiving at the mobile device a response to the notification from the recipient after a failed delivery, wherein the response to the notification is adapted to change the preferred redirection location to an alternative redirection location provided after the failed delivery, wherein the alternate redirection location is different from the primary location and the preferred redirection location", as recited in claim 1.

Claims 3-5 and 7-12 each depend on claim 1 and thus the Applicants submit that claims 3-5 and 7-12 are also patentable under 35 U.S.C. §103 over the combination of Kuebert et al., Myrick et al., and Ray for at least the reasons discussed with respect to claim 1.

Concluding Remarks

For all the foregoing reasons, the Applicant submits that claims 1, 3-5 and 7-12 as pending are in condition for allowance. Consequently the Applicants request reconsideration of the Examiner's final rejection of claims 1, 3-5 and 7-12.

Respectfully submitted,

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VIII. Claims Appendix

1. A method of delivering a parcel to a recipient, comprising:
 - attempting a delivery at a primary location;
 - if the delivery to the primary location fails, communicating from a mobile device a notification to the recipient of an upcoming delivery to a preferred redirection location, wherein the preferred redirection location is selected prior to the delivery;
 - receiving at the mobile device a response to the notification from the recipient after a failed delivery, wherein the response to the notification is adapted to change the preferred redirection location to an alternative redirection location provided after the failed delivery, wherein the alternative redirection location is different from the primary location and the preferred redirection location; and
 - delivering the parcel to the alternative redirection location.
2. (Canceled)
3. The method of claim 1, wherein the notification comprises an email to the recipient.
4. The method of claim 1, wherein the notification comprises a SMS message to the recipient.
5. The method of claim 1, further comprising batching manual records of deliveries.
6. (Canceled)
7. The method of claim 1, wherein prior to step (a), the method further comprises registering with a delivery service.
8. The method of claim 7, wherein the registration step comprises providing the preferred redirection location to the delivery service.
9. The method of claim 8, wherein the registration step comprises providing the primary location to the delivery service.

10. The method of claim 8, wherein the registration step comprises generating an identifier unique to the recipient.

11. The method of claim 8, wherein the registration step comprises generating an identifier unique to the transaction.

12. The method of claim 9, wherein the primary location is a residential address of the recipient.

Claims 13-29 (Canceled).

IX. Evidence Appendix

(NONE)

X. Related Proceedings Appendix

(NONE)